

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 405 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

1. Whether Reporters of Local Papers may be allowed

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

NTKHTI, BALKRISHNA PATEL

Versus

STATE OF GUJARAT

#### Appearance:

MR AD SHAH for Petitioner

Mr. S.R.Divetia APP for Respondent No. 1

MR VIJAY H PATEL for Respondent No. 2, 7, 8

MR KN PATEL for Respondent No. 3

SERVED for Respondent No. 4

CORAM : MR. JUSTICE S.D. PANDIT

Date of decision: 19/03/97

## ORAL JUDGEMENT

Nikhil Balkrishna Patel original complainant in cri. case no. 32/88 and Inquiry Case No. 75/98 has

filed the present revision application to challenge the order passed by the learned Metropolitan Magistrate, Court no.3, Ahmedabad dated 10.12.90 by which he grant C.summary and disposed of the said complaint lodged by the present complainant.

2. It is the case of the complainant that he was carrying on business in the name and style of M/s Virat Paper Processors at Bharatkhand Cotton Mill compound, Amdupura, Kalupur Bridge Corner, Ahmedabad. The premises in which he was carrying on his business were taken on rent by accused Ravindra Gopaldas Gandhi. It is the case of the complainant that said accused Ravindra Gandhi was not making use of the said premises and he was carrying on business in the name and style of M/s G.M.Gandhi. It is further the case of the complainant that the firm was paying rent by cheque since the year 1984. The firm had also carried out some addition and alterations in the said premises including light fittings and had also installed a telephone. It is his further case that he had taken a loan from Bhagyoday Co.Op. Bank Ltd., Ahmedabad. Accused no.1 Natverlal R. Patel is the Managing Director of the said Bhagyoday Co.Op.Bank, New Madhupura, Ahmedabad; whereas the accused no.2 Ravindra R.Gandhi is the nephew of said Natverlal Patel; whereas accused no.3 is the co.brother of accused no.2 Ravindra Gandhi. It is his further case that he had executed equitable mortgage on 20.4.87 and further that Nikhil Balkrishna stood as a guarantor of the said mortgage. Said bank filed Lavad Suit No. 576/88 before the Board of Nominees. It is the claim of the complainant that said suit was filed at the instance of accused no.1 though there was no cause of action to file such a suit and in the said Lavad Suit an order for attachment before judgment was obtained and the same was granted and notice was issued to him returnable on 24.4.88. It is his further case that on 5.4.88 the bank officer had prepared an inventory without giving any notice to him and said inventory was prepared in order to support the accused no.1. Though his goods were lying in the suit property they were not shown in the said inventory and that was done on account of the conspiracy between the bank officers and accused no.2 with a view to help accused no.1. It is his further claim that when he came to know about the inventory he applied to the Lavad Court to have a fresh inventory as the bank has not honestly and correctly prepared the inventory report. On that application of him notice was issued and matter was kept for hearing on 18.4.84. It is further case that realising that the complainant has asked for the preparation of the fresh inventory, the accused forcibly

broke open the said godown on 13.4.88 and were removing the goods from the said godown belonging to him. He was informed about the same by one of the neighbors of the suit premises. By this time, his father was also contacted. He therefore, went there along with his persons and at that time they saw that the goods which were loaded by the accused in the matador were again placed in his godown. At that time his father was insulted and he had sustained bleeding injury. Though he went to the police to lodge a complaint u/ss. 451,380, 323, 506 (2), 120(b) IPC., the police did not take cognizance of the same. He therefore, filed this private complaint against the accused in the court of the learned Metropolitan Magistrate, Court no.3, Ahmedabad.

3. The learned Metropolitan Magistrate was pleased to pass an order of inquiry under section 156(3) Cr.P.C. Accordingly the police carried out the investigation and they ultimately filed a report saying that the complaint should be disposed of by granting B.Summary. The learned Metropolitan Magistrate did not accept the same and directed to carry out further investigation. Accordingly further investigation was carried out and after carrying out further investigation the report along with all the papers of investigation were filed and the learned Metropolitan Magistrate was requested to dismiss the complaint by granting C.summary. The learned Metropolitan Magistrate perused the record as well as the police report and he came to the conclusion that there is bonafide dispute regarding possession of the premises in question between the complainant and accused no.1 and said bonafide dispute regarding possession is to be decided by a competent civil court. He also found that the allegations regarding the alleged commission of the offence punishable under section 323 and 506(2) were not believable and acceptable and that they were not at all probable and therefore, he was pleased to accept the report of the police and dismissed the complaint by granting C.summary.

4. Being aggrieved by the said decision the complainant has come before this court. It is vehemently urged before me by the learned advocate Mr. Shah for the complainant that the material on record clearly shows that the rent of the premises in question was paid by the complainant from the firm's account and therefore, the learned Magistrate ought to have held that the complainant was in exclusive possession of the premises in question. The applicant himself has clearly admitted in his revision application in para 2 that the accused

Ravindra Gandhi had taken the suit premises on rent. It is very pertinent to note that neither in this revision application nor in the complaint lodged by the revision applicant the applicant has stated as to how the said premises which were taken on rent by Ravindra Gandhi came in his possession and what was the nature of transaction between him and Ravindra Gandhi. The rent receipts which came on record clearly show that the rent receipt for payment of rent are issued in the name of accused no.1. Ravindra Gandhi. No doubt in some rent receipts , it does show that the amount of payment of rent was made by cheque from the accounts of the complainant-firm. But merely because the amount of rent has passed from the account of the firm, the conclusion to which the learned Metropolitan Magistrate is arrived at viz. that there is a dispute regarding the possession between the parties and that said dispute is to be decided by the civil court could not be said to be an illegal or perverse finding. The complainant has not either in his revision application or in his complaint hasgiven an explanation as to how rent receipts were issued in the name of accused no.1 though cheque was going from the partnership firm. It is also very pertinent to note that neither in the revision application nor in the original complaint the complainant is not showing as to what is the real dispute between the accused him and accused no.1. Ravindra Gandhi. He has made allegation against the bank officers and the bank by saying that they wanted to help and side with Ravindra Gandhi but he is not frank and fair to say as to what was the real dispute between him and Ravindra Gandhi prior to the filing of the said Lavad Suit. Therefore, he is not coming before the court with clean hands and clear picture so as to disclose before the court as to the real disputes. As against this it is the claim of Ravindra Gandhi that he is in possession of the premises in dispute and that premises in disputes were taken by him on rent. Therefore, in the circumstances the conclusion to which the learned Magistrate has arrived at viz. that there is a dispute between the parties regarding the possession of the premises and that said dispute being bonafide dispute regarding possession , same is to be decided by leading evidence before the Civil Court, consequently said finding could not be said to be a perverse finding. I am dealing with the matter in a revision proceeding. It is settled law that the finding recorded by the Trial Court could be be interfered with by the revisional court by exercising revisional jurisdiction only in case if the said finding is illegal or perverse. Therefore, from the evidence on record, it is not possible for me to hold that said finding regarding real dispute between the

parties recorded by the learned Metropolitan Magistrate is either illegal or perverse so as to interfere with the same by exercising revisional jurisdiction.

5. It must be further mentioned here that admittedly a scuffle has been taken place between the parties on 14.4.88 but the learned Metropolitan Magistrate and the police have found that the case of the complainant that the accused and his men caused simple voluntary hurt to the complainant and that they were given threat of death does not seem to be probable and believable. The learned advocate for the complainant has read the statement of one of the police officers viz. S.P.Sonevane who had gone on the site immediately at the incident in question. He also mentioned that there was some scuffle between the parties but he does not say that at that time he had found any bleeding injuries on any of the persons present there. The complainant has alleged in his complaint that there was bleeding injuries sustained by the complainant's father on his head and that his father was lying on a pool of blood. But in view of the statement of Shri Sonavane, the learned Metropolitan Magistrate has observed that said allegations are not seem to be probable and believable .

7. The incident in question has taken place on 14.4.88. The complaint in question is lodged by the complainant on 16.4.88 and so far no trial has not begun. Therefore, in view of the principles laid down in the case of Common Cause, a registered society vs. Union of India AIR 1996 SC 1619, the complaint is liable to be dismissed. Therefore, on that ground also I hold that present revision application will have to be rejected. Thus present revision application is dismissed. Rule discharged.

(S.D.Pandit.J)